87-37

Case No.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1986

MARGUERITE EADES, Petitioner,

-vs-

DONALD J. STERLINSKE, BRADLEY W. HUFF, and JULIE EWALD, Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT, JULIE EWALD, IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND SUPPLEMENTAL APPENDIX

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May 26, 1987

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES CITED

STATUTES CITED

CONSTITUTIONAL CITATIONS

SUPPLEMENTAL STATEMENT OF THE CASE

The respondent, Julie Ewald (hereinafter "respondent", the remaining respondents being identified either by name or as "defendants") will hereby amplify the statement of the case of the Petitioner in her Brief.

At page 3, petitioner asserts that she was imprisoned for nine (9) months "as a result of the unconstitutional acts of the defendants". However, the facts pled and accepted as true by the District Court are to the effect that "on some day after January 29, 1981," the respondent was directed to alter the docket record. (App., p. A-21). Further, that the petitioner was sentenced to two (2) years in prison and that her term commenced on December 16, 1980. (App., p. A-21). Clearly, the act alleged of the respondent took place subsequent to petitioner's incarceration.

At page 7, petitioner posits

that no Order requiring alteration of the record was filed. Nonetheless, on the face of the First Amended Complaint, the District Court found that Judge Sterlinske "caused his Clerk, Ewald, to alter the docket sheet record." (App., p. A-21).

Petitioner also asserts at pages 7-8 the participation by the respondent and the other defendants in "a scheme which fabricated and falsely altered a criminal trial record and transcript." Instead, that portion of the First Amended Complaint which contained a cause of action in conspiracy, was voluntarily disposed of by the petitioner at the District Court level. (Supp. App., p. SA-20, 21). In the absence of alleged acts of the respondent in conjunction with other defendants, use of the term "scheme" is inflammatory and an improper characterization of what is sought to be placed before this Court relative to the

respondent.

Finally, references are made at page 8 of the Petitioner's Brief to "the conduct" as being "shocking", "disgusting" and reprehensible". The petitioner would imply that these observations of the lower courts obtain with respect to the conduct of each of the three respondents. They did not, however. These forms of commentary have application solely with respect to the alleged conduct of Judge Donald J. Sterlinske. (App., p. A-5, p. A-16).

SUMMARY OF ARGUMENT

Respondent Ewald argues that the Court of Appeals did not conclude that her alleged act was ministerial. Further, the State Court for which she worked had jurisdiction over the petitioner's criminal case and that as to its presiding Judge, he acted toward petitioner in a judicial capacity and carried out judicial acts, thus entitling

him to judicial immunity. She also argues that she was directed by the Judge to act in the manner alleged and that the absence of an official Court Order to this effect does not defeat immunity for her. Respondent further contends that either derivative of the judicial immunity of the said Court or on a self-standing basis, as to the act alleged of her, she is entitled to judicial immunity because of the integral relationship between her performance of her discretionary act and the functioning of the Court. In this respect, her argument is that she is entitled to judicial or quasi-judicial immunity and that qualified immunity or some other form of immunity should not be applied.

Respondent argues additionally that there is not a real and embarrassing split of authority among the Circuits as to the extension of immunity to subordinate court employees, such as

herself, and that upon the facts alleged, this case is not an appropriate vehicle for establishment of a rule of nationwide impact on the doctrine of judicial immunity.

I. GENERAL REASONS FOR DENIAL OF THE WRIT OF CERTIORARI.

In accord with the law developed by this Court, special and important reasons must exist in order to support the granting of a Writ of Certiorari. Rice v. Sioux City Cemetary, 349 U.S. 70, 99 L.Ed. 897, 75 S.Ct. 614 (1954). Something more than an episodic or academic problem must be presented and the Court sees as its responsibility the duty to avoid deciding constitutional issues "unless avoidance becomes evasion." Further, as is set forth in Layne & Bowler Corporation v. Western Well Works, Inc., 261 U.S. 387, 67 L.Ed. 712, 43 S.Ct. 458 (1923), the rule is that this Court should be consistent in

refusing to grant such Writs except in instances where principles are involved which should be settled in the interest of the public at large and where there is a "real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeal."

It is believed by the respondent[1] that the issue of judicial immunity and the breadth of that doctrine have been firmly established by this Court in a line of decisions culminating in Stump v. Sparkman, 435 U.S. 349, 55 L.Ed.2d 331, 98 S.Ct. 1099 (1978). For the Court to grant Certiorari would be to second guess the mixed question of fact and law answered by the Court of Appeals below. It would neither establish a principle of law of general interest to the citizenry of the United States of

[1]The respondents Judge, Donald J. Sterlinske and Bradley W. Huff, being represented by counsel, respondent Ewald will pertain her arguments to her position.

America, nor resolve a real and embarrassing conflict among the circuits. Instead, it would merely resolve a grievance which the petitioner, personally, has with the broad application of judicial immunity.

Ms. Ewald would generally submit that Certiorari should not be granted. Her bases for so arguing are two-fold in nature:

(1) That while there exists a split of authority among the Circuits in application of judicial or derivative immunity to Clerks of Court, it is not an "embarrassing conflict."

(2) That as based upon the petitioner's claim that the respondent's act deprived her of Constitutional rights to liberty, effective assistance of counsel and a fair trial in a criminal proceeding, factually this case does not lend itself to an orderly and progressive development of Constitutional law. This

is argued because the alleged act of the respondent took place long after the trial and incarceration of the petitioner at a time, nonetheless, when disposition of post-trial motions were yet subject to respondent Judge Sterlinske's review and determination, over which process she exercised no control. (App., p. A-15, 16).

Finally, respondent would contend that the petitioner's characterization of her alleged act as being ministerial (Petitioner's Brief, p. 13) is inappropriate, and that upon this critical foundation the petitioner erroneously argues that there is a substantial division of authority among the Circuits.

II. THE COURT OF APPEALS DECISION DOES NOT DEVIATE FROM PRECEDENCE REQUIRING THAT IN ORDER FOR JUDICIAL IMMUNITY TO APPLY, A JUDICIAL ACT OR ACTS SHALL HAVE BEEN TAKEN.

The petitioner argues that the lower court decisions in this case

abrogate the "judicial act" requirement implicit in decisions granting judicial immunity. Ergo, in the absence of a judicial act ascribed to the defendant, Sterlinske, her further argument is that, whether standing alone or derived from the Judge, no immunity should flow to the respondent. The respondent contends that the Court of Appeals did decide that a judicial act or acts had taken place. Just as the ultimate doctrine of judicial immunity is to be broadly applied on the merits, so, too, is the concept of what constitutes a judicial act to be broadly construed. Bradley v. Fisher, 80 U.S. 335, 20 L.Ed. 646 (1872), holds that unless there is a complete absence of all jurisdiction, immunity for acts engaged in shall be afforded. Therein, the Court states:

> "But, if on the other hand, a Judge with general criminal jurisdiction over offenses committed within a certain District, should hold a

> particular act to be a public offense, which is not by the law made an offense and proceed to the arrest and trial of a party charged with such act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction, no personal liability to civil action for such acts would attach to the Judge, although these acts would be in excess of his jurisdiction, or of the jurisdiction of the Court held by him, for these are particulars for his judicial consideration, wherever his general jurisdiction over the subject matter is invoked." 20 L.Ed. at 651.

Where a Judge erroneously or improperly exercises his jurisdiction, where he acts with malice or in a corrupt fashion, as long as there is a scintilla of subject matter jurisdiction, judicial immunity will be afforded. Society and the citizenry of the judicial district in question are protected against corrupt, malicious, vindictive judges and their "shocking", "disgusting" and "reprehensible" acts by the processes of impeachment and removal from office.

To restrictively apply the requirement of "judicial act" would require that this Court artificially set standards so as to ascertain, interpret and condition those acts which are immune from those which are not, for the generally worded constitutional provisions, state statutes and applicable common law, if any, do not with any precision establish standards against which and within whose limits each and every Judge in a given jurisdiction is to perform in response to a specific application of fact and law in order to qualify for immunity. To do so, it is argued, would be to hamstring the judiciary.

The respondent further believes that Bradley v. Fisher, supra., is instructive relative to the concept of what constitutes the division point between a total lack of jurisdiction and jurisdiction for purposes of application

of judicial immunity. As is stated therein at Lawyers Edition, page 651,:

> "Indeed, some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction, or that of the Court held by him, or the manner in which the jurisdiction shall be exercised. And the same purpose of exemption from liability which obtains for errors committed in the ordinary prosecution of a suit where there is jurisdiction of both subject matter and person, applies in cases of this kind, and for the same reasons."

The District Court held that jurisdiction was evident. (App., p. A-12).

The petitioner has alleged that after trial but before the hearing of certain post-trial motions, the defendant Judge falsified a Court record, that he directed his reporter to backdate it, stamp it with the date of trial and that he further caused the respondent to erroneously record in the docket sheet that said document had been filed on the date of trial. (Supp.App., p. SA-3 to 7).

As alleged by the petitioner, did Judge Sterlinske engage in commission of a grave procedural error? Yes. Did he act on an ex parte basis? Yes. Did he fail to see to it that the petitioner's rights and interest were protected? Clearly, yes. Did he act Qua Judge? Yes. Did the petitioner have the expectation at the time his alleged acts were committed that he was acting toward her in a judicial capacity? Yes. Did his Court have jurisdiction? Yes. Stump v. Sparkman, supra., would grant to him immunity under this set of circumstances.

Petitioner would also argue that because the functions of "preparation, preservation and maintenance of the transcript . . . and the record are duties normally performed by court reporters and clerks", defendant Sterlinske's acts, as above described, cannot constitute judicial acts

(Petitioner's Brief, pp. 20-21). This would appear to have been answered to the contrary in the Stump decision where at footnote [11] on page 362, Justice White comments:

> "Even if it is assumed that in a lifetime of judging, a Judge has acted on only one petition of a particular kind, this would not indicate that his function in entertaining and acting on it is not the kind of function that a Judge normally performs."

The petitioner cites ex parte Virginia 100 U.S. 339, 25 L.Ed. 676 (1879), in further support of her argument in this respect. The key to this decision is that this court therein considered, as regarding a Judge's act in automatically excluding black persons from jury duty, that the said act involved no discretion at all and that it was purely ministerial.

Sec. 753.03, Wis. Stats., (1979-80), and Article VII, Sec. 8, Wisconsin Constitution, broadly establish the powers of the Circuit Courts in

Wisconsin. The petitioner does not assert that Judge Sterlinske and his Court -- the Circuit Court for Rusk County -- lacked subject matter jurisdiction. Instead, she would contend that since the acts alleged took place after the trial was concluded, his Court and, thus, he as Judge, no longer retained jurisdiction and, hence, she was was not at that time dealing with him in his judicial capacity. The petitioner makes this argument notwithstanding her further allegation that subsequent to the alleged acts, Sterlinske presided over post-trial motions filed on her behalf (Supp. App., p. SA-5 to 9).

Petitioner argues that what the Judge did is "normally performed by court reporters and clerks." (Petitioner's Brief, p. 21). Even assuming this to be the case in Wisconsin, the breadth of the Circuit Court's jurisdiction as set forth above validates the alleged acts as

judicial even if Sterlinske never before and never after performed the acts alleged. Clearly, he dictated the certificate and directed the reporter and Clerk to act in furtherance of his perceived duties as Judge presiding over the petitioner's criminal case.

The petitioner would further characterize these acts as being ministerial in nature. To the contrary, in order for this to have been the case, Judge Sterlinske and, correspondingly, the respondents, Ewald and Huff, would have had to have been acting in light of a specific statutory or other legal command with respect to which they would have been required to mechanically respond and act. As is set forth in Mississippi v. Johnson, 471 U.S., 475, 18 L.Ed. 437 (1867):

> "A ministerial duty, the performance of which may, in proper cases, be required of the head of a department, by judicial process, is one in

> which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law." 18 L.Ed. at 440.

Sterlinske's acts were in the nature of a discretionary exercise of control over the progress and documentation of a case properly before his Court. For purposes of argument, that he erred grievously in the exercise of his discretion and that, in the process, he violated rights of the petitioner does not take his acts out of the realm of subject matter jurisdiction, nor does it mystically redefine them as being ministerial in nature. In Lowe v. Letzinger, 772 F.2d 308 (7 Cir. 1985), the Court appears to have answered this concern. In ruling against the appellant's assertion that the defendant trial Judge was liable in damages for failure to have notified him of an Order dismissing the case against him, it being alleged that the Judge intentionally delayed notice, the Court stated:

"Assuming the Judge did undertake to control the disposition of his own Order he was still acting in his judicial role, exercising his discretion. His judicial involvement had not yet ended. Interference with giving notice cannot be classified as merely administrative so as to avoid the immunity defense; it is too much an integral part of the total judicial process, in contrast, for exemple, to the mere typing and posting of the notice by a Clerk which is a ministerial task. We hold then that like a Judge's decision as to when an Order should issue, his decision as to whether and how notice should be given is also immunized."

These loose, general allegations as to the Judge do not justify cutting back on judicial immunity and thereby put a judicial officer through the disruptive process of a trial. To label some part of the judicial process as administrative or ministerial and thereby encroach on the judicial defense of absolute immunity, as disturbing as the judicial conduct may be, cannot be permitted. . . . Ibid., p. 313. (Emphasis supplied).

The respondent respectfully submits that should the Court consider the application of judicial immunity to

court clerks to be derivative from the Judge, the Circuit Court for Rusk County having had jurisdiction over the petitioner's case and the Judge having dealt with the petitioner in his judicial capacity and, further, the acts alleged as violating her constitutional rights having been judicial acts upon application of the doctrine the respondent's act is clearly protected, as well.

In the alternative, it is posited that this Court has, on at least one occasion, issued a decision in which it alluded that clerks of court be afforded with judicial immunity. That decision is Barr v. Matteo, 360 U.S. 564, 3 L.Ed.2d 1434, 79 S.Ct. 1335 (1959), in which at p. 569, the Court stated:

> "This Court early held that Judges of Courts of superior or general authority are absolutely privileged as respect civil suits to recover for actions taken by them in the exercise of their judicial functions, irrespective of the motives with

> which those acts are alleged to have been performed, Bradley v. Fisher (U.S.), 13 Wall. 335, 20 L.Ed. 646, and that a like immunity extends to other officers of government whose duties are related to the judicial process. Yaselli v. Goff (CA 2 NY), 12 F.2d 396, 56 ALR 1239, Affd. per curium 275 U.S. 503, 72 L.Ed. 395, 48 S.Ct. 155, involving a Special Assistant to the Attorney General . . ." (Emphasis supplied).

Thus, this Court has spoken indirectly to the effect that judicial immunity flowing to courts will also extend to governmental officials or employees whose duties are interconnected with those of the Court. In this respect, the respondent respectfully submits that the Court take judicial notice, under Secs. 59.39, 59.395 and 753.03, Wis. Stats. (1979-80) of the interrelationship between the duties of the Clerk of Circuit Court in Wisconsin and the powers and functions of the Circuit Courts.

III. THE DECISION OF THE COURT OF APPEALS DID NOT EXTEND ABSOLUTE JUDICIAL IMMUNITY TO MINISTERIAL ACTS OF CLERKS OF COURT; THERE DOES NOT CURRENTLY EXIST A REAL AND EMBARRASSING CONFLICT OF AUTHORITY AMONG THE CIRCUITS; THE DECISION IS CONSISTENT WITH THE GENERAL TENETS OF JUDICIAL IMMUNITY.

The respondent will concede that the Supreme Court has never, per se, decided a case of application of judicial immunity to clerks of court; although, as argued above, it has in Barr v. Matteo, supra., tangentially approached this issue. The respondent does respectfully disagree with the petitioner's characterization that a "raging conflict" exists among the Circuits on this issue. (Petitioner's Brief, p. 26). In addition, she would submit that it appears as though this Court has had the same or similar question posed of it on prior occasions and has declined to either grant Certiorari or consider the merits. Scott v. Dixon, 720 F.2d 1542 (11 Cir. 1983), Reh. Den. 729 F.2d 1468,

Cert. Den. 469 U.S. 832, 83 L.Ed.2d 64, 105 S.Ct. 122 (1984); Martinez v. Winner, 548 F.Supp. 278 (D.Col. 1982), affirmed in part, reversed in part and remanded, 771 F.2d 424 (10 Cir. 1985) modified in part and Reh. Den. 778 F.2d 553 (10 Cir. 1985) Cert. Granted for limited purpose of considering question of mootness, remanded in 10th Circuit, ___ U.S. ___, 90 L.Ed.2d 333, 106 S.Ct. 1787 (1986), case mooted, 800 F.2d 230 (10 Cir. 1986). [2]

Petitioner submits that the Court of Appeals concluded that the act alleged to have been committed by the respondent was a ministerial act and that the Court then engaged in "tortured reasoning" (Petitioner's Brief, p. 29), in rationalizing that she was acting discretionarily and, hence, was protected

[2] See also cases below cited for situations in which writs of certiorari have not been granted.

by judicial immunity. Instead, the Court of Appeals expressly distinguished the respondent's act from the ministerial act of the clerk of court considered in Lowe v. Letzinger, supra. (Concealment of an entry of an Order from the defendant). The Circuit Court of Appeals in the case before this Court concluded that the insertion of an entry into the docket record by the respondent of a falsehood was performed by her within the scope of her duties and that she performed discretionarily in this respect. (App. p. A-6). Therefore, the Court, upon the basis of three premises granted to her judicial immunity:

(1) She was acting in the discharge of her official duties;

(2) Judicial immunity is to be afforded to court officials acting with respect to criminal proceedings; and

(3) Her action was integrally related to the judicial process.

Upon the basis that the Court of Appeals did not conclude that the respondent was acting ministerially, the respondent would raise the following arguments.

Contrary to the petitioner's characterization that a "raging" conflict exists among the Circuits, as to the question of immunity for clerks of court and other court personnel, the respondent would submit that two of the eleven Circuits have not touched upon this subject (Circuits 10 and 11) and that of the remaining nine Circuits, they may be placed in the following categories:

(1) Blanket grant of judicial immunity or quasi-judicial immunity: Circuits 1, 3 and 9. Slotnick v. Staviskey, 560 F.2d 31 (1 Cir. 1977), Cert. Den. 434 U.S. 1077, 55 L.Ed.2d 783, 98 S.Ct. 1268 (1978); Lockhart v. Hoenstine, 411 F.2d 455 (3 Cir. 1969), Cert. Den. 396 U.S. 941, 24 L.Ed.2d 244,

90 S.Ct. 378 (1969); Stewart v. Minnick, 409 F.2d 826 (9.Cir. 1969).

(2) A grant of qualified immunity only: Circuits 2 and 5. Green v. Maraio, 722 F.2d. 1013 (2 Cir. 1983); Tarter v. Hury, 646 F.2d 1010 (5 Cir. 1981).

(3) A grant of judicial immunity if performing a discretionary or judicial or quasi-judicial act: Circuit 7.[3] Henry v. Farmer City State Bank, 808 F.2d 1228 (7 Cir. 1986); Lowe v. Letzinger, supra.

(4) Direct conflict within a Circuit as to application of (1) or (2), above: Circuit 8. McLallen v. Henderson, 492 F.2d 1298 (8 Cir. 1974), and Holt v. Dunn, 741 F.2d 169 (8 Cir. 1984) [Qualified Immunity Grant]; Davis

[3]Circuits 4 and 8 may rule in this fashion, as is perceived upon a reading of their respective decisions in the following cases: McCray v. Maryland, infra.; McLallen v. Henderson, infra.

v. McAteer, 431 F.2d 81 (8 Cir. 1970) [Judicial Immunity].

As to the subordinate topic of personnel following Court Orders or directions, the Circuits have ruled as follows:

(1) Total immunity if the person was acting within his or her scope of authority and following directions of the Court: Circuit 3. Lockhart v. Hoenstine, supra.

(2) Qualified immunity: Circuits 2, 4, 6 and 8. Green v. Mario, supra.; McCray v. Maryland, 456 F.2d 1 (4 Cir. 1972); Smith v. Martin, 542 F.2d 688 (6 Cir. 1976); Holt v. Dunn, supra.

(3) A direct conflict within a Circuit as to application of (1) or (2): Circuit 5. Tarter v. Hury, supra. [Total immunity]; Rheuark v. Shaw, 628 F.2d 297 (5 Cir. 1980), Cert. Den. 450 U.S. 931, 67 L.Ed 2d 365, 101 S.Ct. 1392 (1981); and Slavin v. Curry, 574 F.2d 1256 (5

Cir. 1978) [Qualified Immunity].

(4) Qualified immunity if the person was acting within the scope of his or her authority and was following a directive of the Judge: Circuit 7. Lowe v. Letzinger, supra. Quasi-judicial immunity for acts in reliance upon a Court Order: Circuit 7. Henry v. Farmer City State Bank, supra.

Clearly, the 4th Circuit has ruled that no immunity will lie relative to a ministerial act in the absence of court directives or orders which were followed. McCray v. Maryland, supra.

The respondent submits, in reliance on Layne & Bowler Corporation v. Western Well Works, Inc., supra., that the above array of decisions does not indicate a real and embarrassing conflict of authority among the Circuits. Those Circuits holding for total immunity, relative to both ministerial or discretionary acts, have not recently

handed down decisions in this realm. The 7th Circuit, on the other hand, has gone from an across-the-board application of judicial immunity, Dieu v. Norton, 411 F.2d 761 (7 Cir. 1969), to a modified approach, as based upon consideration of distinct situations of fact and law. The respondent argues that the law concerning immunity of court officials, such as clerks of court, is progressing in an orderly fashion within the Circuits and that this Court should decline to grant Certiorari upon this basis.

Contrary to petitioner's contention, the Court of Appeals decision is not inconsistent with case law construing the application of judicial immunity. Consistent with the decision of Barr v. Matteo, supra., the facts as alleged and deemed to be true by the lower Court clearly establish that the respondent was acting pursuant to a directive of the Judge of a court of

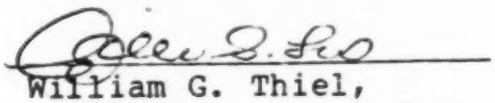
general jurisdiction over criminal matters in the petitioner's case. The Judge caused or directed her to perform the act alleged to have been in violation of the petitioner's Constitutional rights. (App., p. A-21). When coupled with the further argument that the Court of Appeals did not conclude that the respondent had engaged in a ministerial act, it is posited by the respondent that should this Court deem it appropriate to review the nature of the type and extent of immunity to be afforded to subordinate court personnel, neither is the instant case, either on the facts or as to the law applied by the lower court, appropriate for the prospective establishment of tenet of Constitutional law of national application.

CONCLUSION

The respondent, Julie Ewald, respectfully submits and contends that

this Court should refuse to grant the petitioner's Writ of Certiorari.

Respectfully submitted,



William G. Thiel,
Counsel for Respondent,
Julie Ewald.

INDEX TO SUPPLEMENTAL APPENDIX
BRIEF OF RESPONDENT
JULIE EWALD

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARGUERITE EADES,

Plaintiff,

FIRST AMENDED COMPLAINT

-vs-

Case No. 85-C-824-S

DONALD J. STERLINSKE, BRADLEY W. HUFF, and JULIE EWALD,

Defendants.

Now comes the plaintiff, Marguerite Eades, by her attorneys, Fox, Fox, Schaefer & Gingras, S.C., by Robert J. Gingras, and Brynelson, Herrick, Bucaida, Dorschel & Armstrong, by Steven J. Schooler, and as and for a complaint against the defendants Donald J. Sterlinske, Bradley W. Huff, and Julie Ewald, alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this Court by 28 U.S.C., Sec. 1343.

2. This claim may be venued in the Western District of Wisconsin

pursuant to 28 U.S.C., Sec. 1391 insofar as the plaintiff resides in this district, and the acts alleged as the basis for plaintiff's claim occurred within the boundaries of this district.

PARTIES

3. Plaintiff Marguerite Eades (hereinafter referred to as "Eades") is an adult resident of Wisconsin residing at Woodruff, Wisconsin.

4. The defendant Donald J. Sterlinske (hereinafter "Sterlinske") is an adult resident of Wisconsin residing at Route 1, Tony, Wisconsin, and is a former judge of Rusk County.

5. The defendant Bradley W. Huff (hereinafter "Huff") is an adult resident of Wisconsin residing at Ladysmith, Wisconsin.

6. Upon information and belief, the defendant Julie Ewald (hereinafter "Ewald") is an adult resident of Wisconsin, residing at 1002 Bruno Avenue,

Ladysmith, Wisconsin.

GENERAL ALLEGATIONS

7. On or about June 16, 1980, Eades was charged criminally with two counts of welfare fraud by the State of Wisconsin in the Circuit Court for Rusk County.

8. Sterlinske held the title of circuit court judge throughout the course of the criminal proceedings against Eades.

9. Huff held the title of court reporter throughout the course of the criminal proceedings against Eades.

10. Ewald held the title of clerk (for Sterlinske) throughout the course of the criminal proceedings against Eades.

11. In approximately October of 1980, a trial was held regarding the above-described criminal counts before a jury.

12. Eades was represented by

Allan Kenyon (hereinafter "Kenyon"), the city attorney for Ladysmith (County seat for Rusk County), during the trial. Eades was convicted at the conclusion of the trial. At no time during the course of the trial was there held a jury instruction and verdict conference (hereinafter "instruction and verdict conference). The absence of a jury instruction and verdict conference prevented Eades from receiving a fair trial.

13. After the trial, Harry Hertel (hereinafter "Hertel") replaced Kenyon as Eades' attorney in the criminal proceedings against her. Hertel requested a transcript for purposes of filing post-conviction motions at some time within three months following Eades' conviction.

14. After Hertel requested a transcript for purposes filing post-conviction motions, Sterlinske called his

court reporter Huff into his office and dictated a "certificate" in which he made certain representations as to what had occurred with respect to the instruction and verdict conference. (See Exhibit "A" attached hereto and incorporated herewith).

15. Upon information and belief, the above-described "certificate" materially misrepresented what actually occurred in the criminal proceedings. Sterlinske directed Huff to date the certificate as of the date of the trial, even though this was not the date on which it was prepared and signed. Moreover, Sterlinske directed Huff to indicate in the certificate that a full-fledged instruction and verdict conference had taken place in Sterlinske's chambers even though such a conference had not in fact occurred. Finally, Sterlinske caused Huff to alter the trial transcript so that it would be

consistent with its false certificate.

16. The certificate was stamped "Filed" with the Clerk's Stamp as of October 23, 1980, and the Court's docket sheet was changed to indicate that the certificate had been filed on that date, even though the document was filed on a much later date.

17. Upon information and belief, on some day after January 29, 1981, Sterlinske caused the aforementioned certificate to be stamped by Huff with the Clerk of Court's filing stamp, indicating that it had been placed in the court file on October 23, 1980, the original trial date, and placed in the court file.

18. Upon information and belief, on some day after January 29, 1981, Sterlinske caused Ewald to alter the docket sheet record to indicate that the afore-described certificate was filed on October 23, 1980, the original trial

date, even though the certificate was filed on a much later date.

19. Sterlinske, Huff, and Ewald all knew that the certificate was false. The participation of each in the stamping of the certificate and the insertion of it into the record was done with the intention of misleading others, including Eades and her counsel, regarding the proceedings at trial.

20. None of the defendants provided any of the parties to the criminal proceeding with notice of the insertion of the certificate in the record. Defendants did not provide said notice so as to mislead others, including Eades and her counsel, regarding the proceedings at trial.

21. After Hertel placed Sterlinske on notice that he intended to challenge the jury instructions, the jury verdict, and the instruction and verdict conference, Sterlinske further attempted

to persuade Hertel not to challenge the jury instructions, jury verdict, and the instruction verdict conference. Sterlinske, in a letter to Attorney Hertel of April 9, 1981, represented that "the file in the matter indicates that there was a conference held between all of the attorneys, the instructions were gone over carefully, and they were approved by both the district attorney and Mrs. Eades' counsel at that time." (See Exhibit "B" attached hereto and incorporated herewith. Said misrepresentation was fraudulent in nature and made with the intent to deceive the parties including counsel of record.

22. In his decision on post-conviction motions, Sterlinske, without reference to his certificate, falsely stated:

> Prior to the submission of the verdict and the charge to the jury, the clerk's minutes indicate that a conference was held in chambers, and the attorneys for the parties

> stipulated and agreed that the verdicts as submitted to the jury were approved by both and likewise there was no objection to any of the instructions as proposed by the Court. This was accomplished at 3:43 p.m. after the closing of the testimony of the parties.

The Clerk's minutes did not indicate any of what Sterlinske purported that they contained. Sterlinske denied Eades post-conviction motions.

23. Sterlinske sentenced Eades to two years in prison.

24. On or about April 30, 1981, Sterlinske communicated in writing to the Parole Board for the State Department of Health and Social Services (hereinafter "Board") regarding Marguerite Eades. One of the purposes of Sterlinske's letter (See Exhibit C attached hereto and incorporated herein) was to dissuade the board from granting Eades parole at her initial parole hearing. In his letter, Sterlinske stated:

> It has been my policy not to express any feelings one way or

> the other when I receive notices of the initial parole hearing. I would, however, be rather interested in being apprised of this inmate's present attitude as it relates to the circumstances surrounding these offenses. It is usually inconsistent to accept full responsibility and acknowledge improper conduct for which an inmate may be incarcerated on one hand, and then proceed with alternate remedies in seeking an appeal which at least seems to indicate an unwillingness to accept or recognize and acknowledge improper conduct. (Emphasis supplied).

In writing this letter, Sterlinske was also attempting to dissuade Eades from pursuing her appeal so that his criminal misconduct would not be discovered during her appeal.

25. Eades' request for parole was denied at her initial parole hearing. Eades served nine months in prison. Eades was in prison from December 16, 1980, to approximately September 6, 1981.

26. Upon information and belief, Sterlinske engaged in the actions described in paragraphs 21 and 22 so as

to mislead the parties and appellate courts as to what had occurred at the trial.

27. The acts of Sterlinske as described in paragraphs 14 through 22 and 24 above constitute illegal acts in violation of Wis. Stat. 946.72(1) (tampering with public records is a Class D felony), and Wis. Stat. 946.12 (misconduct in public office includes intentionally refusing to perform a nondiscretionary ministerial duty, does an act in excess of lawful authority or which he knows is forbidden by law, or in his official capacity as officer or employee, makes an entry in which a material respect is intentionally falsified) and also constitute non-judicial acts occurring outside Sterlinske's jurisdictional authority and absolute immunity as judge.

28. At times relevant hereto, defendants engaged in a pattern and

practice of fraudulently altering court records in legal cases other than the criminal proceedings regarding Eades as described above.

29. As a result of the fraudulent actions of defendants as described in paragraphs 14 through 22, 24 and 27-28, Eades did not obtain knowledge of said actions until a short time after February 11, 1985, when she received a letter from James E. Doyle, Jr. in his capacity as attorney for the Judicial Commission for the State of Wisconsin. (See Exhibit "D" attached hereto and incorporated herewith).

PLAINTIFF'S FIRST CAUSE OF ACTION

30. That as and for a cause of action against the defendants Sterlinske, Huff and Ewald, under 42 U.S.C., Sec. 1983, the plaintiff Eades hereby realleges all of the paragraphs previously set forth in this complaint as if set forth fully herein.

31. The acts of Sterlinske, Huff and Ewald, as described above, deprived Eades of liberty without due process of law, and denied her the equal protection of the laws, all in violation of her constitutional rights as secured by the Fourteenth Amendment of the United States Constitution.

32. That the actions engaged in by Sterlinske, Huff and Ewald, as described above, were committed under the color of state law and in violation of Eades' rights under the Fourteenth Amendment of the United States Constitution as described in paragraph 31.

33. That the actions engaged in by Sterlinske, Huff and Ewald, as described above, directly and proximately caused Eades to incur and suffer those damages as described in paragraph 45 below.

PLAINTIFF'S SECOND CAUSE OF ACTION

34. That as and for a second cause of action against defendants Sterlinske, Huff, and Ewald, under 42 U.S.C., Sec. 1983, the plaintiff Eades hereby realleges all of the paragraphs previously set forth in this complaint as if set forth fully herein.

35. The acts of Sterlinske, Huff and Ewald, as described above, deprived Eades of her right to a fair trial, a fair and impartial jury trial, effective assistance of counsel, a fair ~~and~~ impartial judge, and fair consideration of post-verdict motions and appeal based upon an accurate record, contrary to those due process guarantees as secured by the Sixth and Fourteeneth Amendments of the United States Constitution.

36. The actions engaged in by Sterlinske, Huff and Ewald, as described above, in violation of Eades' rights

under the Sixth and Fourteenth Amendments of the United States Constitution were committed under color of state law.

37. That the actions engaged in by Sterlinske, Huff and Ewald, as described above, directly and proximately caused eades to incur and suffer those damages as described in paragraph 45 below.

PLAINTIFF'S THIRD CAUSE OF ACTION

38. That as and for a cause of action for civil conspiracy against defendants Sterlinske, Huff and Ewald, the plaintiff Eades hereby realleges all of the paragraphs previously set forth in this complaint as if set forth fully herein.

39. That this cause of action for civil conspiracy is a state law claim brought pendent to plaintiff's federal causes of action as described above.

40. That the defendants Sterlinske, Huff, and Ewald, agreed to,

actually formed and operated a conspiracy to deprive Eades of her due process, liberty, fair trial and appellate rights by engaging in those wrongful and illegal acts as described in paragraphs 14 through 22, 24 and 27-28.

41. That each of the defendants Sterlinske, Huff and Ewald, acted and participated knowingly in the furtherance of their conspiracy as described in paragraphs 14 through 22, 24 and 27-28.

42. That each of the defendants Sterlinske, Huff, and Ewald, were aware of, acquisced, and assented to the illegal actions and scheme as described above in paragraphs 14 through 22, 24 and 27-28.

43. That the defendants Sterlinske, Huff, and Ewald had a unity of purpose of common design in understanding, or a meeting of the minds, as to those unlawful acts as described above in paragraphs 14 through 22, 24 and

27-28.

44. That the civil conspiracy of defendants Sterlinske, Huff, and Ewald, as described above in paragraphs 14 through 22, 24 and 27-28 and 40 through 43 caused damage to Eades as described in paragraph 45 below.

COMPENSATORY DAMAGES

45. As a direct and proximate result of the actions engaged in by defendants as described above, Eades has suffered damages in the form of loss of wages, mental and physical distress, pain and suffering, humiliation, loss of reputation and diminished earning capacity and will continue to suffer said damages in the future.

PUNITIVE DAMAGES

46. That the course of conduct of defendants as described above was deliberately undertaken and was committed in wanton, willful and reckless disregard of Eades' rights, and in view of the

aggravating circumstances set forth above, was attended by malice and vindictiveness on the part of defendants.

47. As a result of the course of conduct of defendants, Eades is entitled to punitive damages.

WHEREFORE, plaintiff Eades demands:

(a) Trial by jury on all claims for relief.

(b) Back wages including interest.

(c) Compensatory damages in the sum of $1,000,000.00.

(d) Punitive damages in the amount of $1,000,000.00.

(e) Reasonable attorneys' fees and costs and disbursements pursuant to 42 U.S.C., Sec. 1988.

(f) Grant such other and further relief as the Court deems just and proper.

Dated this 9th day of January, 1986.

Respectfully submitted,

Marguerite Eades, plaintiff

BY:

Fox, Fox, Schaefer &
Gingras, S.C.
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_____

Robert J. Gingras

BY:

Brynelson, Herrick,
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Steven J. Schooler
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Madison, WI 53703

_____

Steven J. Schooler

April 15, 1986

Hand Delivered
Mr. Joseph W. Skupniewitz, Clerk
United States District Court
Western District of Wisconsin
120 N. Henry Street
Madison, WI 53701-0432

RE: Eades v. Sterlinske, et. al.
Case No. 85-C-824-S.

Dear Judge Shabaz:

Enclosed is Plaintiff's Brief in Opposition to Motion to Dismiss of Defendant Julie Ewald in reference to the above case. Copies of the brief have been mailed this same date to all opposing counsel.

This is also to advise the Court that the plaintiff and the defendant Ewald have agreed to a voluntary dismissal of Plaintiff's Third Cause of Action against defendant Ewald. Counsel will be providing you with the appropriate Stipulation and Order for Dismissal of

Plaintiff's Third Cause of Action against defendant Ewald.

Thank you for your consideration.

Very truly yours,

FOX, FOX, SCHAEFFER
& GINGRAS, S.C.

Robert J. Gingras

/smw
enclosure

cc: William Thiel
James McDermott
Steven J. Schooler